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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 608 OF 2003

Shivaji Ganpat Sutar ... Appellant

V/s

The State of Maharashtra ... Respondent

Smt. A.N. Pathan for the appellant.

Shri V.B.K. Deshmukh, A.P.P. for the respondent.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 15TH DECEMBER, 2006.

ORAL JUDGMENT (PER SMT. NISHITA MHATRE, J.):

1. The 6th Additional Sessions Judge, Satara has convicted and sentenced the accused under Section 302 of the Indian Penal Code for having murdered his wife Tarubai on 17.2.2002. The accused has, therefore, preferred the present appeal impugning the judgment and order of the Sessions Judge.

2. Briefly stated the case of the prosecution is that, the accused and Tarubai were married 25 years before the incident in which Tarubai was killed. They were living with Tarubai's mother. The accused was working as a

carpenter. According to the prosecution, on 17.2.2002, the accused and the victim's mother Malan went to sleep in the courtyard at about 10.00 pm. The accused and the victim quarrelled at about 11.30 pm. Malan woke up and found the accused beating Tarubai. She pacified the accused and tried to settle the dispute between them. The accused entered into the house, brought out an iron rod and assaulted Tarubai on her head and face with it. Malan shouted out and her neighbours rushed there. She told them that the accused had beaten Tarubai. The accused was taken to the police patil. Thereafter the victim was driven to the dispensary for medical aid. However, she had to be taken to the Civil Hospital, Satara as the required medical treatment was not available in the dispensary. Tarubai succumbed to her injuries at about 8.25 am on 18.2.2002. The F.I.R. was lodged by her mother that day, after which the accused was arrested. He was charged under Section 302 of the Indian Penal Code. Before the Sessions Court, the accused denied having committed any offence and claimed to be tried. The Sessions Judge has convicted and sentenced the accused under Section 302 of the Indian Penal Code.

3. The prosecution has relied on 6 witnesses to prove the charge against the accused. PW-1 is the mother of

the victim, PW-2 is the doctor who treated her at the Civil Hospital and who also performed the post-mortem examination. PW Nos. 3 and 4 are panch witnesses who have proved recovery of the clothes of the accused and the spot panchanama, respectively. PW-5 is a neighbour of PW-1 who rushed to the spot on hearing the cries of PW-1. PW-6 is the investigating officer.

4. PW-1, Malan, is an eye witness according to the prosecution. She has deposed that the incident occurred on election day. She was contesting the polls and her daughter Tarubai was helping her canvass for her election. She has narrated that, on 17.2.2002 at about 9.30 pm she, her daughter and the accused went to sleep in the courtyard. About an hour later she heard Tarubai and the accused quarrelling. She woke up and settled the dispute between the husband and wife. She then goes on to state that the accused got up, entered the house, came out with an iron rod in his hand and started beating Tarubai with it. She claims to have seen the accused beating her daughter on her head and her face. Tarubai fell to the ground. She had sustained bleeding injuries. PW-1 Malan shouted out when her neighbours rushed to her house. According to her, the neighbours caught hold of the accused and took him to the police patil. The police patil and her neighbours came back to

her house and took the victim to the Dispensary when the witness accompanied them. She then claims to have taken her daughter to hospital. This witness has spoken about the professional relationship between her son-in-law, the accused and her brother Bajirao. Both these persons were working as carpenters. This witness, in her cross-examination has admitted that Tarubai used to help her with her election work. She has denied any knowledge of any illicit relations between the victim and one Jaysingh. This witness has conceded that the accused had gone to another village in order to purchase a whetstone. She has also conceded that the accused was at another village till about 9.00 or 10.00 pm. She has then stated that, on the fateful day she and her daughter went to sleep. She awoke when she heard some noise. She put her hand on her daughter's forehead and found it wet. PW-1 realised that it was blood and shouted out for help. This incident, according to the witness occurred between 10.00 and 10.30 pm. She has then stated that several persons gathered near her house including the police patil who was called by somebody. However, in the cross-examination this witness does not speak about the presence of the accused when the incident occurred. Although in the examination-in-chief she claims to have witnessed the assault on her daughter by the accused, in the cross-examination, she does not

mention that the accused was also present when she and her daughter went to sleep that night. The version given by this witness in the examination-in-chief that she awoke when she heard the couple quarrel is not maintained by her in the cross-examination. In the cross-examination she says that she woke up when she heard a noise and found that her daughter had blood on her forehead. Therefore, the claim of this witness that she has seen the offence is difficult to believe. The presence of the accused at the spot when the incident occurred also is not positively proved. In fact, this witness has conceded that the accused had gone to Nagthane to purchase a whetstone. She has also stated that the accused used to work in Jawalwadi, another village, till about 9.00 or 10.00 pm. According to this witness, two or three hours were required to walk the distance between Odoli and Durgalwadi, where she lives. If this is so, the presence of the accused at the scene of offence is unbelievable, assuming the incident had occurred at 10.00 pm, as claimed by this witness.

5. PW-2 is the doctor who has administered medical aid to the victim when she was admitted to hospital at about 3.15 am on 18.2.2002. He has also performed the post-mortem examination. This witness has opined that the injury sustained by the victim was possible with the

use of a iron rod. The witness then has stated that the victim was admitted to hospital by her husband, the accused. His signature appears on the case papers. Thus, if what PW-1 has stated is true that the accused was taken to the police patil by the neighbours and was kept in custody, then he would not have been available when the victim was admitted to hospital.

6. PW-3 is the panch witness who has proved that the clothes of the accused were attached. These clothes were blood stained and dirty. PW-4 is the panch who has proved the spot panchanama. This witness has spoken about the blood stains on a mat which was lying in the courtyard in Malan’s house. There was an iron rod placed near it. He has also stated that there was no fencing around the plot.

7. The next witness came to be examined by the prosecution PW-5, one of the neighbours, who rushed to the spot on hearing cries of PW-1. This witness stays at a distance of 60 ft. from Malan’s house. He claims that, on 17.2.2002 at about 11.30 pm, he heard Malan shouting out. He and two others rushed to the spot and asked PW-1 as to what had transpired. This witness claims to have seen the victim lying unconscious on the mat in the courtyard. An iron bar was seen placed close

to her. He has spoken about the presence of the accused. He claims that, he and two other persons caught hold of the accused and produced him before the police patil. He then has spoken about calling for a jeep belonging to one Yadav and taking the victim in that jeep to hospital. According to this witness, Malan, the accused, the police patil and three others including himself took the victim to a hospital in Satara. In the cross-examination he has stated that when he rushed to the spot, he saw Tarubai lying unconscious and her mother weeping. He has admitted that the accused used to work in the adjacent villages as a carpenter. This witness has spoken about the presence of nearly 20 people on the spot after the incident.

8. The investigating officer has been examined as PW-6. He has proved the panchanama. He has produced the report of the chemical analyzer which show that there were blood stains on the clothes of the accused and on the iron rod seized from the scene of offence. However, he has admitted in his cross-examination that he had not obtained an analysis of the finger prints on the iron rod. He claims to have arrested the accused at about 10.00 pm on 18.2.2002, although the F.I.R. was lodged at about 11.30 pm.

9. The accused in his statement which was recorded under Section 313 of the Criminal Procedure Code has stated that, he had been falsely implicated at the instance of the Sarpanch and Bajirao, the uncle of the victim's brother PW-1. According to him, he was working until 9.30 pm on the night of the incident. He claims that, when he returned home, his wife was not there and he started searching for her. He claims that, some body told him that his wife had been killed in her mother's house. He arrived at Malan's house. He questioned her as to how the victim had sustained the injury, when Malan told him that somebody had assaulted her and had run away. He has stated that his clothes were blood stained because he fell on his wife's body.

10. Considering the evidence led by the prosecution in this case, we are unable to arrive at the inference that it has proved beyond doubt that the accused is guilty of the offence with which he was charged. As already observed, the testimony of Malan is riddled with discrepancies and contradictions. PW-5 is not an eye witness to the incident and has spoken about what Malan related to him. This part of the evidence obviously cannot be accepted as it is hearsay evidence. This witness has only seen the victim lying unconscious,

there was an iron rod near her and Malan and the accused were present. It is difficult to believe the case of the prosecution on the basis of such evidence. The case made out by the accused in his statement before the Court under Section 313 of the Criminal Procedure Code is not unbelievable. The statement of the accused coupled with the evidence led by the prosecution leads to two possible eventualities. The first possibility is that, PW-1 has witnessed the assault on Tarubai as narrated in her examination-in-chief. However, the second possibility which can be inferred from the cross-examination of PW-1 is that, she had not seen the assault on her daughter, but had awoken only after she heard a noise. The accused arrived at the scene of offence a little later. According to PW-1, the incident occurred between 10.00 and 10.30 pm, and she shouted out immediately after the incident, however, PW-5 whose house is 60 ft. away from that of PW-1, claims that he heard Malan’s shouts only at about 11.30 pm. When he rushed to the spot he saw the accused there. Therefore, the possibility of the accused having reached the spot only after Tarubai sustained the injuries, cannot be ruled out. Moreover, if the testimonies of PW Nos. 1 and 5 are to be believed, that PW-5 and two others caught hold of the accused and handed over to the police patil who kept him in custody, then there is no

explanation as to why the prosecution has not examined the police patil. If, as PW-5 has deposed there were 20 persons at the spot, there is no explanation why no other person was examined from that crowd. The accused has explained the blood stains on his clothes by stating that he fell over the body of his wife on seeing her lying injured and unconscious. This statement is also credible.

11. In these circumstances, in our view, the prosecution has not proved beyond doubt that the accused was guilty of the crime with which he was charged.

12. Appeal allowed. The conviction and sentence imposed by the Sessions Court is set aside. The accused to be set free, if not otherwise required.

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